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14 *Attorneys for PLAINTIFF and the Class*

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 **FRANCISCO SOTO**, an individual; on behalf
18 of himself and all other similarly situated
19 persons;

20 **PLAINTIFF,**

21 **v.**

22 **SAMSUNG ELECTRONICS AMERICA,**
INC., a New York Corporation; and
23 **SAMSUNG ELECTRONICS CO., LTD.**,
a Foreign Corporation,

24 **DEFENDANTS.**
25
26
27
28

CASE NO.:

CLASS ACTION COMPLAINT

1. **VIOLATIONS OF COLORADO'S
CONSUMER PROTECTION
ACT; AND**
2. **UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

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1 Plaintiff **FRANCISCO SOTO** (hereinafter, “**PLAINTIFF**”) brings this action on behalf of
 2 himself and all other similarly situated individuals, by and through his attorney, for injunctive
 3 relief, restitution and damages caused by the conduct of **DEFENDANTS SAMSUNG**
 4 **ELECTRONICS AMERICA, INC.** and **SAMSUNG ELECTRONICS CO., LTD.** (collectively
 5 hereinafter, “**SAMSUNG**”), and each of them, as follows:

6 **I. INTRODUCTION**

7 1. **SAMSUNG** manufactures and sells smartphones which pose a threat to the safety
 8 of consumers. These dangers made international headlines when numerous Samsung Note7
 9 devices exploded and burst into flames leading to a complete recall of the product. **SAMSUNG**
 10 determined the battery was the cause of the problems with the Note7, yet continues to sell, market,
 11 and distribute other smartphones with the same or similar battery such that these other
 12 smartphones also pose a risk of overheating, fire and explosion. Accordingly, the Note7 recall was
 13 a Band-Aid to a pervasive problem for which major surgery was required.

14 2. **SAMSUNG** has been made repeatedly aware of the issues with its various
 15 smartphone models, yet has failed to warn consumers of the dangers posed by the lithium ion
 16 batteries in the devices.

17 3. **SAMSUNG** markets its phones as durable, reliable, always available, and the “hub”
 18 of consumers’ lives. **SAMSUNG** expects and encourages consumers to use their phone for all
 19 aspects of their lives and to always have their phone with them. Despite this expected ubiquity,
 20 **SAMSUNG** conceals from consumers that the products are, in fact, ticking time bombs.

21 4. **SAMSUNG** designs, manufactures and advertises the batteries in its smartphones to
 22 have maximum duration with minimum charge times. **SAMSUNG** also designs, manufactures and
 23 advertises its smartphones to have superior computing capacity and power, and to effectively run a
 24 multitude of applications and processes simultaneously. The desire to design a product with each
 25 of these, and other qualities, led **SAMSUNG** to manufacture smartphones which pose a risk of
 26 overheating, fire and explosion.

27 5. While **SAMSUNG** recalled the Note7, it has failed, and continues to fail, to recall
 28 other dangerous products, failed to warn consumers of the dangers they pose, and failed to

adequately respond to consumers whose phones have suffered from overheating, fire and explosion.

6. The extreme risk of overheating, fire, and explosion along with SAMSUNG's concomitant refusal to recall the products, leaves PLAINTIFF and each member of the Class owning phones that have the propensity for the following:



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II. JURISDICTION AND VENUE

7. This action is within the jurisdiction of this Court by virtue of 28 U.S.C. § 1332(d)(2). **PLAINTIFF** and **SAMSUNG** are citizens of different states and the amount in controversy of this action exceeds the sum of \$5,000,000, exclusive of interest and costs.

8. This Court has personal jurisdiction over **FRANCISCO SOTO** because he submits to the Court's jurisdiction in this case.

9. This Court has personal jurisdiction over **SAMSUNG ELECTRONICS AMERICA, INC.**, because it conducted and continues to conduct substantial business in California, and has sufficient minimum contacts with California, including: Samsung Media Solutions Center America, a division of **SAMSUNG ELECTRONICS AMERICA, INC.**, is based out of Mountain View, California; and, **SAMSUNG ELECTRONICS AMERICA, INC.'S** printer product division is headquartered in Irvine, California.¹

10. This Court has personal jurisdiction over **SAMSUNG ELECTRONICS CO., LTD** because it conducted and continues to conduct substantial business in California, and has sufficient minimum contacts with California, including: Samsung Strategy and Innovation Center, a global organization within **SAMSUNG'S** Device Solutions division, is headquartered in Menlo Park, California; Samsung Information Systems America is headquartered in San Jose, California; Samsung Semiconductor, Inc. is headquartered in San Jose, California; and, Samsung Open Innovation Center is located in Palo Alto, California.²

11. Venue is proper in this Court under 28 U.S.C. § 1391 because **SAMSUNG** innovates, researches, develops, improves, and markets a substantial amount of phones in this

¹ See Samsung, U.S. Divisions, available at: http://www.samsung.com/us/aboutSamsung/Samsung_electronics/us_divisions/; <http://www.samsung.com/ContactUs/ElectronicsAmerica/index.htm>; <http://www.samsung.com/ContactUs/InformationSystemsAmerica/index.htm>; see also Gannes, Liz, "Samsung Confirms Four New Bay Area Offices," Allthingsd.com (Dec. 29, 2012 at 2:13PM) available at: <http://allthingsd.com/20121229/SAMSUNG-confirms-four-new-bay-area-offices/>; "Samsung Electronics Announces New Silicon Valley R&D Center," BusinessWire.com (Sept. 19, 2012 at 9:00 AM) available at: <http://www.businesswire.com/news/home/20120919005456/en/Samsung-Electronics-Announces-Silicon-Valley-Center>.

² *Ibid.*

District. **SAMSUNG** “has been a presence in Silicon Valley for more than two decades.”³ **SAMSUNG**’s Media Solutions Center (a.k.a. Research and Development Center)⁴, which is located in this District, “delivers innovative, connected experiences across Samsung’s *mobile* and digital ecosystem that enhance the experience of owning a Samsung product,”⁵ is “[c]omprised of two six-story LEED Platinum designed office buildings totaling nearly 385,000 square feet, and two parking structures,” and “serves as an epicenter of innovation and is home to some of the world’s top talent,” including “more than 250 doctorate recipients from some of the best schools around the globe.”⁶ According to a **SAMSUNG** press release, the “great successes” of the labs housed at the Media Solutions Center “benefit Samsung’s vast portfolio of mobile, visual display, home appliance, wearable and audio and stereo products.”⁷ **SAMSUNG** also maintains and operates a Strategy and Innovation headquarters “within Samsung’s Device Solutions division, with the core missions of open innovation in collaboration with entrepreneurs and strategic partners,” within this District. Not to mention, Samsung’s Information Systems America and Semiconductor divisions are headquartered in this District, along with an Open Innovation Center.⁸ Therefore, a substantial part of the events and/or omissions alleged in this complaint, giving rise to **PLAINTIFF**’s claims, occurred in, emanated from and/or were directed from this District. Venue is also proper because **SAMSUNG** is subject to this District’s personal jurisdiction with respect to this action.

III. THE PARTIES

A. PLAINTIFF

12. Plaintiff **FRANCISCO SOTO** is a resident of Sahaurita, Arizona. **PLAINTIFF**

³ “Samsung Electronics Announces New Silicon Valley R&D Center,” BusinessWire.com (Sept. 19, 2012 at 9:00 AM) available at: <http://www.businesswire.com/news/home/20120919005456/en/samsung-Electronics-Announces-Silicon-Valley-Center>.

⁴ See *Ibid.*

⁵ See samsung, U.S. Divisions, available at: http://www.samsung.com/us/aboutsamsung/samsung_electronics/us_divisions/.

⁶ “Research at the Core of SAMSUNG Research America’s New Mountain View Campus,” SAMSUNG Newsroom (Sept. 1, 2015) available at: <https://news.SAMSUNG.com/global/research-at-the-core-of-SAMSUNG-research-americas-new-mountain-view-campus>.

⁷ *Ibid.*

⁸ See SAMSUNG, U.S. Divisions, available at:

http://www.SAMSUNG.com/us/aboutSAMSUNG/SAMSUNG_electronics/us_divisions/.

1 SOTO purchased a Samsung Galaxy S5 smartphone in the State of Colorado, and suffered the
2 damage complained of herein in the State of Arizona.

3 **B. DEFENDANTS**

4 13. **PLAINTIFF** is informed and believes, and thereon alleges, that **SAMSUNG**
5 **ELECTRONICS CO., LTD.** was, at all relevant times mentioned herein, a foreign corporation
6 organized and existing under the laws of the Republic of Korea, with its principal place of business
7 located at 129 Samsung-Ro, Yeongtong-Gu, Suwon-si, Gyeonggi-do, Korea. **SAMSUNG**
8 **ELECTRONICS CO., LTD.** is the parent company of **SAMSUNG ELECTRONICS**
9 **AMERICA, INC.**

10 14. **PLAINTIFF** is informed and believes, and thereon alleges, that **SAMSUNG**
11 **ELECTRONICS AMERICA, INC.** was, at all relevant times mentioned herein, a New York
12 corporation organized and existing under the laws of the state of New York and registered with the
13 California Secretary of State to conduct business in California with a headquarters in New Jersey.

14 15. **SAMSUNG ELECTRONICS AMERICA, INC.** touts itself as “a recognized innovation
15 leader in consumer electronics design and technology.”⁹

16 16. **SAMSUNG ELECTRONICS AMERICA, INC.** is also a wholly owned
17 subsidiary of Defendant **SAMSUNG ELECTRONICS CO., LTD.**

18 17. **SAMSUNG** is the largest seller of smartphones in the world, dominating 22.8% of
19 the worldwide market in the second quarter of 2016, nearly double the market share of the next
20 highest competitor.¹⁰ In 2011 alone, **SAMSUNG** reported \$143.1 billion in sales and had 206,000
21 employees worldwide.¹¹ As of March 2016, **SAMSUNG** held the largest share of the United
22 States’ smartphone market, at 28.8 percent.¹²

23
24 ⁹ See Samsung, U.S. Divisions, available at: http://www.samsung.com/us/aboutsamsung/samsung_electronics/us_divisions/.

25 ¹⁰ The next closest competitor was Apple with only 11.7% in worldwide sales of smartphones. “Smartphone Vendor
26 Market Share, 2016 Q2,” International Data Corporation (IDC), available at:
<http://www.idc.com/prodserv/smartphone-market-share.jsp>.

27 ¹¹ “Samsung Electronics Announces New Silicon Valley R&D Center,” BusinessWire.com (Sept. 19, 2012 at
28 9:00AM) available at: <http://www.businesswire.com/news/home/20120919005456/en/samsung-Electronics-Announces-Silicon-Valley-Center>.

¹² Spence, Ewan “Samsung Topples Apple as Galaxy S7 Defeats iPhone” available at
<http://www.forbes.com/sites/ewanspence/2016/05/04/samsung-overtakes-apple-us-smartphone-sales/#dcc15d3289f9>

1 **C. AGENCY & CONCERT OF ACTION**

2 18. At all times herein mentioned, **SAMSUNG**, and each of them, hereinabove, were
3 the agents, servants, employees, partners, aiders and abettors, and/or joint venturers of each of the
4 **SAMSUNG** entities named herein and were at all times operating and acting within the purpose
5 and scope of said agency, service, employment, partnership, enterprise, and/or joint venture, and
6 each Defendant has ratified and approved the acts of each of the remaining **SAMSUNG** entities.

7 19. Each of the **SAMSUNG** entities aided and abetted, encouraged, and rendered
8 substantial assistance to the other **SAMSUNG** entities in breaching their obligations to
9 **PLAINTIFF** and the Class, as alleged herein.

10 20. In taking action to aid and abet and substantially assist the commission of these
11 wrongful acts and other wrongdoings complained of, as alleged herein, each of the **SAMSUNG**
12 entities acted with an awareness of his/her/its primary wrongdoing and realized that his/her/its
13 conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals,
14 and wrongdoing.

15 **IV. FACTUAL BACKGROUND**

16 **A. SAMSUNG’S GALAXY S AND NOTE PRODUCTS**

17 21. **SAMSUNG** makes Android-based mobile devices, including its popular “Galaxy”
18 line of smartphones, phablets, and tablets. Historically, **SAMSUNG** releases new flagship
19 smartphones each year and are identified as part of the “Galaxy S” series. The first generation
20 “Galaxy S” phone hit the market in June 2010, and was followed in subsequent years by the SII,
21 SIII, S4, S5, S6, and S7. In between the roll-out of a new flagship model, **SAMSUNG** commonly
22 releases one or more iteration of the prior flagship model. These interim iterations are often
23 followed by variants that have the word “Edge,” “Edge+,” or “Active” added to the model name.
24 *See Table in ¶23.*

25 22. In late 2011, **SAMSUNG** began selling a high-end smartphone/tablet hybrid which
26 it called the “Galaxy Note.” Galaxy Note products were larger than regular smartphones and
27 include a stylus for additional functionality.

23. Since April 2014, **SAMSUNG** has released the following Galaxy and Note models¹³:

GALAXY S SERIES	
<i>Model</i>	<i>Release Date</i>
S5	April 2014
S6	April 2015
S6 Edge	April 2015
S6 Active	July 2015
S6 Edge+	August 2015
S7	March 2016
S7 Edge	March 2016
S7 Active	June 2016
GALAXY NOTE SERIES	
<i>Model</i>	<i>Release Date</i>
Note 5	August 2015
Note 7	August 2016

24. The “Galaxy S” and “Galaxy Note” smartphones are powered by lithium ion batteries. Lithium-ion batteries power a host of consumer electronic devices, including computers and power tools.

25. The batteries in **SAMSUNG**’s smartphones are measured in milli-ampere hours (“mAh”), which is a unit of electric charge that expresses the capacity of a battery – how much total energy a battery can discharge before needing to be recharged. A battery’s discharge rate is the amount of current being drawn from the battery. The length of time a battery will run depends on both the battery’s capacity and discharge rate.

26. Note and Galaxy S devices:

GALAXY S SERIES	
<i>Model</i>	<i>Battery Capacity</i>
S5	2,800 mAh
S6	2,550 mAh

¹³ **SAMSUNG** did not release a “Note6.”

S6 Edge	2,600 mAh
S6 Edge+	3,000 mAh
S7	3,000 mAh
S6 Active	3,500 mAh
S7 Edge	3,600 mAh
S7 Active	3,900 mAh
GALAXY NOTE SERIES	
<u>Model</u>	<u>Battery Capacity</u>
Note 5	3,000 mAh
Note 7	3,500 mAh

27. The S5, S6, S6 Edge, S6 Edge+, S6 Active, S7, S7 Edge, S7 Active, and Note5 (the “Subject Phones”), as well as the Note7, all pose a risk of overheating, fire and explosion as they were designed, engineered, developed, manufactured, produced and/or assembled in a substantially similar manner to the Note7. While **SAMSUNG** has recalled the Note7, it has not done so with respect to the Subject Phones.

B. THE DANGERS OF THE LITHIUM ION BATTERIES IN SAMSUNG’S SMARTPHONES

28. The dangers posed by lithium ion batteries made headlines in September 2016 when numerous **SAMSUNG** Note7 devices exploded and burst into flames. This caused the Consumer Product Safety Commission (“CPSC”) to order a formal recall of the Note7. The Note7 devices have also been banned from all commercial air travel.

29. Lithium ion batteries are often used in consumer products. The electrolyte material in these batteries is highly volatile, flammable, and potentially explosive if it gets too hot which is why lithium ion batteries require software, hardware and design solutions and protections to operate safely.

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1 30. Dr. Donald Sadoway, a Materials Chemistry professor at MIT, described why
2 lithium ion batteries explode in an interview with *Time Magazine*:¹⁴

3 If the temperature gets high enough . . . at some point, if you get up to about 400-
4 500 degrees Centigrade, the metal oxide in the negative electrode actually starts
5 liberating oxygen. And that's really dangerous, because now, instead of having a
6 fire . . . getting its oxygen from the air surrounding it, it's getting its oxygen from
7 inside the battery itself. ***The term of art is, this has now become a bomb.*** You've
8 got fuel and oxygen in the same place at the same time.

9 31. This is often referred to as a "thermal runaway" event, after which the battery will
10 catch fire or explode. A thermal runaway event generates high temperatures exceeding 1100
11 degrees Fahrenheit. It can happen in a variety of circumstances, including when the battery is
12 overcharged, when it is rapidly discharged, when there is a cell defect, when there is cell damage,
13 and in heat.¹⁵ According to Scientific American:

14 *... faulty batteries can be overcharged. Well-made batteries will stop charging*
15 *automatically once they're full*, but that's not always the case for faulty batteries,
16 If left plugged in for too long, the lithium ions can collect in one spot and be
17 deposited as metallic lithium within the battery.... Also, heat from the overcharging
18 can cause oxygen bubbles within the gel, which are highly reactive with metallic
19 lithium.¹⁶

20 32. **SAMSUNG** initially stated the Note7's problem was limited to only one (1) of its
21 two (2) battery supply sources. After the initial recall and exchange of the Note7 devices, more
22 explosions of the devices were reported. On October 13, 2016, **SAMSUNG** announced it was
23 recalling all Note7 devices, original and exchanged. As reported by the Wall Street Journal¹⁷:

24 The X-ray and CT scans showed a pronounced bulge.

25 After reports of Galaxy Note 7 smartphones catching fire spread in early
26 September, Samsung Electronics Co. executives debated how to respond. Some
27 were skeptical the incidents amounted to much, according to people familiar with
28 the meetings, but others thought the company needed to act decisively.

¹⁴ "We Asked a Battery Expert Why Samsung's Phones Are Catching Fire, by Alex Fitzpatrick, published by Time Magazine on September 9, 2016 (emphasis added), available at: <http://time.com/4485396/samsung-note-7-battery-fire-why/>

¹⁵ See, Federal Aviation Administration ("FAA"), Summary of Findings from Previous Tests – Lithium-ion, available at: [http://www.icao.int/safety/DangerousGoods/pptfaa/Full scale ion and large format.pptx](http://www.icao.int/safety/DangerousGoods/pptfaa/Full%20scale%20ion%20and%20large%20format.pptx) (last accessed October 13, 2016).

¹⁶ <https://www.scientificamerican.com/article/the-science-behind-samsung-phone-battery-fires/> (last accessed October 13, 2016) (emphasis added).

¹⁷ Cheng, Jonathan and McKinnon, John, "The Fatal Mistake that Doomed Samsung's Galaxy Note," available at <http://www.wsj.com/articles/the-fatal-mistake-that-doomed-Samsungs-galaxy-note-1477248978>.

1 A laboratory report said scans of some faulty devices showed a protrusion in Note
2 7 batteries supplied by Samsung SDI Co., a company affiliate, while phones with
batteries from another supplier didn't.

3 It wasn't a definitive answer, and there was no explanation for the bulges. But with
4 consumers complaining and telecom operators demanding answers, newly
appointed mobile chief D.J. Koh felt the company knew enough to recall 2.5 million
5 phones. His suggestion was backed by Samsung's third-generation heir apparent,
Lee Jae-yong, who has advocated for more openness at one of the world's most
6 opaque conglomerates.

7 That decision in early September—to push a sweeping recall based on what turned
out to be incomplete evidence—is now coming back to haunt the company.

8 Two weeks after Samsung began handing out millions of new phones, with
9 batteries from the other supplier, the company was forced to all but acknowledge
that its initial diagnosis was incorrect, following a spate of new incidents, some
10 involving supposedly safe replacement devices. With regulators raising fresh
questions, Messrs. Lee and Koh decided to take the drastic step of killing the phone
11 outright.

12 33. **SAMSUNG** instructed consumers who had a Note7 device to “please power down
13 immediately” and “contact the carrier or retail outlet where they purchased their device.”¹⁸
14 **SAMSUNG** stated that it was announcing the program “in cooperation with the U.S. Consumer
15 Product Safety Commission and in partnership with carriers and retailers.”¹⁹

16 34. Consumers could turn in their Note7 devices (both the original and exchanged
17 versions) for refunds, exchanges for **SAMSUNG** products or other smartphones and offered
18 between \$25 and \$100 “bill credits.” Consumers who exchanged their Note7 for other
19 **SAMSUNG** devices were offered \$100 bill credits.²⁰ Consumers who elected to receive a refund
20 or purchase a different brand of smartphone, were offered \$25 bill credits, “less any incentive
21 credits already received.”²¹

22 35. Outside of the Note7 recall, **SAMSUNG** has taken no steps to recall or warn
23 consumers about the risks of overheating, fire and explosion posed by its Subject Phones.

24 ///

25
26 ¹⁸ See “Samsung Note7 Safety Recall” available at <http://www.samsung.com/us/note7recall/>, updated October 13,
2016.

27 ¹⁹ *Ibid.*

28 ²⁰ For consumers who had already exchanged their phones, they were offered a \$75 bill credit in addition to the \$25
bill credit from the exchange program. *Ibid.*

²¹ *Ibid.*

1 C. **SAMSUNG WAS AND IS AWARE OF OVERHEATING PROBLEMS WITH**
 2 **THE SUBJECT PHONES, FAILED TO FIX THE PROBLEM OR WARN**
 3 **ITS CUSTOMERS**

3 36. **SAMSUNG** made the choice to increase the power of the battery in the Subject
 4 Phones despite knowing that older models and generations with less powerful batteries were
 5 experiencing problems with overheating, catching fire, and even exploding. The problem dates
 6 back several years; and well before the release of the Subject Phones. It is only with the Note7 that
 7 complaints of overheating, fire and explosion became so overwhelming and so highly publicized
 8 that **SAMSUNG** could no longer ignore or mask the problem.

9 37. **SAMSUNG** had good reason to be concerned about overheating in its smartphones.
 10 The occurrence of similar incidents in other models of **SAMSUNG** phones and electronic devices
 11 have been reported through the media and consumer protection agencies for years. Despite
 12 knowledge and awareness, **SAMSUNG** failed to fix the root problem, notify or warn the public of
 13 the dangers its electronic devices presented, initiate a recall of all devices where overheating,
 14 explosion, and/or fire were foreseeable, or otherwise address the problem. Instead, **SAMSUNG**
 15 provided some individual consumers with replacements without disclosing the risks and defects in
 16 the Subject Phones.

17 38. The CPSC has recorded numerous consumer incident reports of **SAMSUNG**
 18 phones and accessories overheating, catching fire, and even exploding. The reports relate to a
 19 variety of devices—including the Galaxy S2, Galaxy Tab 2, Galaxy Tab 3, Galaxy S3, Galaxy S4
 20 Active, Galaxy S5, Galaxy S6, Galaxy S6 Edge, and Galaxy S6 Active. The consumer complaints
 21 of such problems date back to August of 2011.

22 39. Consumer reports to CPSC regarding unsafe Samsung Galaxy S and Samsung
 23 Galaxy Note products (not including complaints regarding the Note7) include the following:

24 • On December 6, 2012, a Health Care Professional reported that a Galaxy S3 got
 25 “warm” and caused a “partial thickness” burn on a consumer’s right cheek. Report No. 20121206-
 FE67D-2147461269.

26 • On February 28, 2013, a consumer reported that he or she observed a Galaxy S2
 27 “overheating” and “battery swelling.” The consumer expressed “[f]ear of battery fire.” Report No.
 20130228-0C612-2147458351.

28 ///

1 • On August 16, 2013, a consumer reported that a Galaxy S2 began “hissing,” made a
2 loud “POP,” and filled the room with a noxious smoke. The incident occurred while the device
was charging at night. CPSC Report No. 20130816-D0B19-2147453034.

3 • On January 20, 2014, a consumer reported that a Samsung Galaxy S3 and charging
4 cord became “visibly burned and melted.” The consumer reported “[i]t looks like it had been on
fire momentarily.” The incident occurred while the device was charging. Report No. 20140120-
0DFDC-2147448018.

5 • On April 17, 2014, a consumer reported that a Galaxy S4 started to “smell” and
6 “smoke,” causing the charger to melt into the phone. The incident occurred while the device was
charging. Report No. 20140417-51573-2147445343.

7 • On April 25, 2014, a consumer reported that a Galaxy S3 made a “loud pop,” and
8 “the battery ... shot the back cover and battery out of the phone spraying a black fluid out and
pouring out black smoke ... the battery pack was red in color and smoking hot” The device
9 was charging at the time. Report No. 20140425-7F6F6-2147445126.

10 • On May 1, 2014, a consumer reported that a Galaxy S4 became “extremely hot”
11 and burned the consumer’s son. The consumer contacted Samsung about the incident, but they had
not called back at the time of the report. The consumer reported he felt the “phone is dangerous.”
12 CPSC Report No. 20140501-C2DA6-2147444903.

13 • On May 12, 2014, a consumer reported that a Galaxy S4 “became so hot it melted
the cable. I’m not sure if there was fire but the device was certainly smoking.” The device was
14 charging at the time. CPSC Report No. 20140512-5B5C8-2147444606.

15 • On September 29, 2014, a consumer reported that a Galaxy S4 began smoking and
the “battery caught on fire,” damaging the consumer’s floor. The consumer reported the incident
16 directly to Samsung. CPSC Report No. 20140929-BD00A-1431381.

17 • On November 2, 2014, a consumer reported that a Galaxy S4 began burning in the
consumer’s pocket. When the consumer pulled the phone out of his or her pocket, it seared the
18 consumer’s skin. The consumer further reported “[t]he temperature was equivalent to pulling
something out of the oven after baking or boiling water and dunking your hand in it.” CPSC
19 Report No. 20141102-D37FA-2147439274.

20 • On November 13, 2014, a consumer reported that a refurbished Galaxy S4 awoke
the consumer with the smell of burning electronics, and burned the consumer’s hand before the
21 consumer realized “the phone was starting to catch fire.” The consumer further reported that
“[t]he charging port was burnt, the cord was melted, and [his or her] sheets and mattress pad were
22 burnt.” Report No. 20141113-0F420-2147438923.

23 • On December 30, 2014, a consumer reported that a Galaxy S4 “literally melted to
[the consumer’s] counter” while charging. The consumer further reported that “[t]he area around
24 the charging port was black and melted.” CPSC Report No. 20141230-C86A9-2147437158.

25 • On July 24, 2015, a consumer reported that a Galaxy Note 2 “became hot,” and
emitted “large amounts of smoke” and “sparks.” The consumer further reported that the battery
26 “projected out of the back of the device ... leaving burn marks and a hole in the carpet.” Report
No. 20150724-ABD3B-2147429986.

27 • On December 29, 2015, a consumer reported that a Samsung phone charger for a
28 “Newer Samung Galaxy” had “almost started on fire.” The “phone was red hot,” the tip of the

1 charger was black, and the phone was “completely toast.” The consumer further reported: “Totally
2 unsafe! My house could have started on fire.” Report No. 20151229-96F83-2147425364.

3 • On January 14, 2016, a consumer reported that a charging device for a Galaxy S4
got “extremely hot and started to melt.” Report No. 20160114-AC115-1545877.

4 • On September 16, 2016, a consumer reported that a Galaxy S4 Active “melted” into
5 the charging cable. The phone burned the consumer’s finger. The consumer further reported that
the phone “probably could have got a fire.” Report No. 20160916-61984-2147414098.

6 • On November 7, 2016, a consumer reported that a charging Galaxy S4 exploded
7 and was on fire in the middle of the night while it was in a child’s bedroom. The experience was
8 “[a]bsolutely terrible and did lots of damage. This is an immediate safety concern. [The consumer]
is very upset about this safety hazard and consumers should be aware of this danger.” Report No.
20161107-9B849-2147411034.

9 40. Numerous additional complaints have been submitted by consumers to
10 saferproducts.gov. regarding the Subject Phones include the following:

11 • On August 9, 2015, a consumer reported that a Galaxy S5 began “smoking from the
point at which the charge plugs into the phone.” Both the phone and charger had “burn marks and
12 were melted slightly.” The consumer further reported that he or she feared the phone or charger
would have started a fire if the consumer had not woken up. CPSC Report No. 20150809-FD1A7-
2147429518.

13 • On September 19, 2015, a consumer reported their five month old Galaxy S6
14 charger was overheating and had “melted plastic from the overheating of the charger.” The
consumer reported the “Heating is severe,” and that the phone “gets very hot to the touch. . .
15 enough to burn myself.” The consumer also reported that the “chargers are original chargers, from
the box . . . that came with the phone.” Report No. 201609199088D2147428266.

16 • On November 16, 2015, a consumer reported suffering “a first degree burn of my
17 right ring finger due to excessive heat from the charger at the point of connection to the phone
while on ‘fast charge’ mode.”

18 • On January 18, 2016, a consumer reported that a Galaxy S6 Edge became
19 “extremely hot to touch,” and developed a crack in the screen. Report No. 20160118-B87EB-
2147424570.

20 • On January 23, 2016, a consumer reported that a Galaxy S6 began emitting a
21 “strange smell,” and that the Samsung charger was “warped, melted, and discolored.” The
consumer further reported that the phone was “extremely hot” to the point it would have “burned a
22 small child.” The incident occurred while the phone was charging. Report No. 20160123-F8845-
2147424397.

23 • On March 21, 2016, a consumer reported that a Samsung charging device for a
24 Galaxy S6 “caught on fire and melted.” Report No. 20160321-83C90-2147420788.

25 • On June 21, 2016, a consumer reported that at “1230am on June 9, 2016 using the
26 Samsung charger that is issued with the phone. The phone was sitting on the side of the bed, with
nothing covering it, and around 4am [] it pretty much exploded and caught on fire. The sound was
27 so loud it woke my child up in the next room. The fire burnt through my sheets, mattress . . .”
Report No. 20160620-2E2C7-2147417652.

- 1 • On August 17, 2016, a consumer being burned and scarred as a result of repeated
2 overheating of their Galaxy S6 Edge. Report No. 20160817-CO577-2147414972.
- 3 • On September 2, 2016, a consumer reported the battery in their Galaxy S6 Active
4 caught fire and nearly caused a house fire. Report No. 20160902-FF27C-2147414519.
- 5 • On September 10, 2016, a consumer reported he had placed his S7 Edge in his
6 “right front pocket” and that “shortly thereafter he noticed his phone whistling, screeching, and
7 vibrating, as well as smoke coming from his pocket.” According to the report, the consumer
8 suffered burns to his hand when he tried to remove the phone from his pocket and that, “without
9 warning the S7 Edge exploded and caught fire” causing second and third degree burns. Report No.
10 20160910-B5468-2147414311.
- 11 • On September 16, 2016, a consumer reported that a Samsung Galaxy S6 Active
12 “burned up while charging via a Samsung charger.” The incident set off smoke alarms, filled the
13 customer’s bedroom with smoke, charred curtains and bedding, and burned through the hardcover
14 of a book. The consumer reported that she contacted Samsung about the incident, and that
15 Samsung gave her the “runaround.” CPSC Report No. 20160916-1BB3F-2147414093.\
- 16 • On September 16, 2016, a consumer reported that the battery of a Samsung Galaxy
17 S5 is “bulging” and the phone is “warm to touch.” The consumer further reported that Samsung
18 refused to do anything other than sell the customer a new battery because the phone “had not yet
19 exploded.” CPSC Report No. 20160916-13A98-2147414102.
- 20 • On September 16, 2016, a consumer reported their Galaxy S6 Active “burned up
21 while charging via a Samsung charger. The smoke alarms went off and our bedroom was filled
22 with smoke. There was char on the curtains about 2 feet away from the bed and charred marks on
23 the headboard; the phone burned through the hardcover of a book.” The consumer complained
24 about receiving the “runaround” from Samsung customer service and suffering through substantial
25 delays prior to receiving a replacement and check for the property damage.
- 26 • On September 16, 2016, a consumer reported her “two-month-old Samsung S7
27 Edge got so hot that it burned my hand and I could not hold onto it.”
- 28 • On September 21, 2016, a consumer reported their Galaxy S6 “heats up to the point
where it can’t be used because it’ll burn,” and that Samsung had refused to address his serious
concern about his own safety and risk of fire or explosion.
- On September 23, 2016, a consumer reported using a Samsung Galaxy S6 “when it
started reporting it no longer had service. It then got very hot near the power button. I burnt my
finger trying to get it to turn off.” The consumer explained that “Despite getting hot enough that I
got a burn that blistered, the phone has never reported itself as being overheated.”
- On September 26, 2016, a consumer reported her phone charger cord was “hot,
melted and smoking” while her Galaxy S7 was plugged in and charging.
- On September 30, 2016, a consumer reported the following about their Galaxy S6
Active: “9-26-2016 I woke up at 5:30 took phone off charger and did usual checking email and
played games on phone until 6:30. Phone was not hot that I could tell. After taking kids to the bus
about 20 minutes without using the phone I took it out of my pocket laid it on my bed and it
popped really loud and start spewing smoke and melted plastic out of the phone on both ends,
screen shattered and the case melted. The smoke alarms went off and the phone was too hot to
touch.”

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1 • On October 1, 2016, a consumer reported their Galaxy S7 was having significant
2 problems with the “phone getting extremely and dangerously hot.” The consumer reported the
3 problem to Samsung, but was told that the S7 was not affected by the recall of the Note7 and that
Samsung would not replace it because it was outside the 30-day warranty period. According to the
report, the problem worsened until the “phone got so hot that it melted into the [] case.”

4 • On November 1, 2016, a consumer reported that the Galaxy S6 was charging at
5 night when it began to smoke and sizzle. The battery “exploded and the front and back of the
6 phone was burned. The room filled with smoke and the nightstand it was charging on was also
burned where the phone was sitting.” Report No. 20161101-BBOB1-2147411490.

7 • On November 14, 2016, a consumer reported that the S6 Active got so hot while
8 charging that it burned the consumer’s fingers trying to unplug it and it melted the charger.
Consumer states he/she “just want[s] a phone that isn’t going to burn my home down or harm my
family.” Report No. 20161114-6337E-2147410795.

9 • On November 27, 2016, a consumer reported that her Galaxy S7 got so hot it was
10 sizzling on the table and when she picked it up it was so hot she dropped it. Samsung refused to
11 replace or fix the phone. The consumer reported he/she was told that Samsung has knowledge of
the overheating problems with the S7, they are looking into it, they are not sure if it is the OS or
the battery, but “they have not had enough complaints to make it public.” Report No. 20161127-
91DE8-2147410347.

12 • On December 2, 2016, a consumer reported that her Galaxy S7 started smelling
13 shortly after she started an update while in her vehicle. When she tried to pick up the phone the
14 “case was soft and warped, the phone was uncomfortably hot and the smell got so bad [her]
15 husband thought the phone was going to catch fire or implode” so he threw the phone in the back
of their truck to cool it down. She retrieved it from the back of the truck when they got to their
destination. The next day, during her commute, she plugged the phone in to charge it and it got hot
and melted a rubber portion on the phone and the buttons popped out on the sides. Verizon refused
to trade the phone because it is a “potential Safety Hazard.” Report No. 20161202-7609C-
2147410202.

16 • On December 13, 2016, a consumer reported the following: “I am writing to inform
17 you that there have been numerous consumer reports of the Samsung Galaxy S7 Edge over heating
18 and the screen cracking. My wife's phone got so hot the screen cracked and burned her hand
19 slightly. I have notified Samsung several times via phone as well as through the social media
facebook page and all I get is the run around and they are quoting "because of the state of our
20 company, we are not accepting any repair requests" and not repairing nor giving any alternatives
for this hazardous device. I had sent my device in for repair and they didn't even have it a day
21 before they packed it back up and sent it back to me un-repaired accusing me of damaging/
dropping the phone. there is no sign of abuse on the phone. Finally they are having me send my
22 phone in to reevaluate to possibly fix or replace it with another Samsung Galaxy S7 Edge. I do not
feel safe having one of my family members using this replacement phone and I think that the
23 Samsung Galaxy S7 Edge should be on a recall notice for over heating.” Report No. 20161213-
22020-2147409598.

24 • On December 18, 2016, a consumer reported their Galaxy S5 battery exploded on
25 October 7, 2016 while charging. The explosion caused damage to molding, tiles and shoes. Report
26 No.: 20161218-D12DC-2147409191.

27 • On January 2, 2017, consumer reported that his Galaxy S7 Edge smartphone was
28 charging while he was asleep. He woke up to his phone bursting into sparks and flames.

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1 • On January 31, 2017, the face of a nine-year old consumer's daughter was burned
2 by his Samsung Edge 7. Consumer states he believes there is a very likely possibility the phone
could explode or cause undue harm. Report No. 20170131-80F17-2147407480.

3 • On February 4, 2017, a consumer reported that the Galaxy S7 Edge was charging
4 while the consumer was talking on the phone. The smartphone battery became so hot that it burned
the consumer's hands and face, causing blisters. Consumer believes the smartphone is neither safe
nor reliable. Report No. 20170204-C4742-2147407365.

5 • On February 11, 2017, a consumer reported that their Galaxy S7 battery exploded
6 and caught fire while charging on the nightstand. The fire produced heavy smoke in the home and
the spouse was sent to the hospital for smoke inhalation. Report No. 20170211-385B1-
7 2147407187.

8 41. **SAMSUNG** is and was aware of these reports and the hazards posed by their
9 phones because many consumers report the incidents directly to **SAMSUNG**, and **SAMSUNG** has
10 also acknowledged many of the reports by responding on the consumer agency's website with a
11 boilerplate response. Indeed, several consumers report that **SAMSUNG** failed to take their
12 complaints seriously, and refused to provide any compensation beyond merely replacing the
13 dangerous and defective phones with similarly risky products.

14 42. **SAMSUNG** even took specific steps to attempt to address the overheating issues in
15 designing the hardware for the S7, relying on unconventional technology and unproven designs to
16 attempt to provide a partial solution to the overheating problems in its smartphones hardware
17 designs.

18 43. **SAMSUNG's** website describes the new hardware used to attempt to address these
19 concerns, known as a "thermal spreader." According to **SAMSUNG**, the thermal spreader it
20 designed was "unlike conventional thermal spread technology."²² **SAMSUNG's** team responsible
21 for designing the system further stated that "due to the spatial limits of smartphones, the cooling
22 system's cooling capacity alone is not enough to cool the device. We need to calculate the amount
23 of electric current and optimize the heat control algorithm to minimize occurring heat. In other
24 words, the new thermal spreader hardware controls the heat more effectively but the software heat-
25 control algorithm must be made compatible to ensure best performance."²³

26 ///

27 ²² See <https://news.samsung.com/global/faces-of-innovation-galaxy-s7-s7-edge-how-we-created-the-cooling-system-in-the-galaxy-s7-and-s7-edge>.

28 ²³ *Ibid.*

CLASS ACTION COMPLAINT

²⁷ “[Editorial] The Perfect Fusion: The Story Behind the Metal and Glass of the Galaxy S6,” Samsung Newsroom (June 1, 2015) available at: <https://news.Samsung.com/global/the-perfect-fusion-the-story-behind-the-metal-and-glass-of-the-galaxy-s6-ass-and-metal-was-not-without-its-challenges-the-story-behind-the-galaxy-s6-sound>.

49. **SAMSUNG** bragged: “[i]n introducing innovation, not only in design and engineering, but also in manufacturing processes, Samsung adheres to its notoriously strict quality control policy. Each product undergoes intense durability testing such as drop tests, bending test and performance testing among many other steps. Samsung takes to ensure the highest quality products. By fusing together innovation with durability, Samsung is able to provide the level of quality consumers expect from Samsung.”²⁸

50. **SAMSUNG** marketed the S6 Edge+ as being “More than a phone, it’s the hub of your life, always with you, always on...you do everything with your phone... shouldn’t you expect more from it?” And **SAMSUNG** also worked to decrease the charging time, advertising that, on the S6, S7 and Note5 models that charging was faster than ever and the phone could be fully charged in ninety minutes.

51. **SAMSUNG** advertised the S6 as having “next level performance” and “next level charging,” including built in wireless charging.

52. **SAMSUNG** advertised and marketed the S7 models by explaining that it was “not just launching a new phone, we are launching a new way of thinking about what a phone can do.” **SAMSUNG** stated, “our phones go everywhere with us,” and told consumers “Time is valuable. If time is the most valuable thing, why would you waste time charging your phone” in advertising the “fast charging” capabilities of the S7 models.

53. **SAMSUNG** advertised the S7 Active as the “toughest Samsung ever” and touted its battery performance and fast charging capability.

54. Despite these descriptions and marketing efforts, **SAMSUNG** concealed from consumers the risks of overheating, fire, and explosion posed by the Subject Phones.

55. **SAMSUNG**’s omissions were material to consumers’ purchasing decisions in that had consumers been warned of the dangers of the products, they would not have purchased the Subject Phones or would have paid less for the Subject Phones than they paid.

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²⁸ “Forming Glass, Metal Frame – The Art of Craftsmanship in the Galaxy S6,” Samsung Newsroom (March 2, 2015) available at: <https://news.samsung.com/global/forming-glass-forging-metal-the-art-of-craftsmanship-in-the-galaxy-s6>

56. Even while **SAMSUNG** was performing its recalls of the Note7, it continued to attempt to conceal the scope of the problem. **SAMSUNG** reportedly offered to pay at least one consumer in China approximately \$900 to replace his Note7 if he agreed not to publicize a video of his smartphone overheating and smoking.²⁹ **SAMSUNG** has also issued copyright claims to YouTube in order to take down parody videos posted by the public of the Note7 bursting into flames or exploding.³⁰ And despite the well-publicized recall of the Note7, **SAMSUNG** continues to hide the risks of the Subject Phones, and has taken no steps to warn its customers or recall additional products subject to the same dangers, despite the fact that **SAMSUNG** has yet to identify the cause of the overheating, explosions and fires in the Note7 or the Subject Phones.

57. On October 12, 2016, in the midst of the Note7 recalls, **SAMSUNG** reportedly³¹ sent push notifications directly to some of its consumers' smartphones:

Safety Recall Notice

Your Galaxy S7 is not an affected device.

The Galaxy S7 is not subject to recall.
You can continue to use your device normally

58. **SAMSUNG** knew the Subject Phones were defectively designed or manufactured, would fail without warning, posed a risk to the public, and were not suitable for their intended use. Until the problem became too widespread, publicized, and pervasive to ignore with the Note7, **SAMSUNG** failed to warn **PLAINTIFF**, the Class and the public about the inherent dangers of the Subject Phones, despite having a duty to do so. Additionally, **SAMSUNG** has continued to fail

²⁹ Wee, Sui-Lee, "Samsung's Uneven Handling of Galaxy Note 7 Fires Angers Chinese," (available at http://www.nytimes.com/2016/10/19/business/Samsung-galaxy-note7-china-test.html?_r=0).

³⁰ BBC News, October 21, 2016, "Samsung 'blocks' exploding Note 7 parody videos" (available at <http://www.bbc.com/news/technology-37713939>).

³¹ Haselton, Todd "Samsung to Galaxy S7 Owners: Your Phone is NOT Recalled" (available at <http://www.technobuffalo.com/2016/10/12/galaxy-s7-not-recalled/>).

1 to warn consumers of the dangers related to the Subject Phones, implying the Note7 is an outlier
 2 and that **SAMSUNG**'s other products, including the Subject Phones, are safe.

3 59. **SAMSUNG** owed **PLAINTIFF** a duty to disclose the defective nature of Subject
 4 Phones, including the dangerous risk of explosion, fire and overheating, because **SAMSUNG**:

5 a. possessed exclusive knowledge of the defects rendering the Subject Phones
 6 inherently more dangerous and unreliable than similar smartphone products; and,

7 b. intentionally concealed the dangerous situation with the Subject Phones
 8 through their marketing campaign and recall programs.

9 60. **SAMSUNG**, and each of them, designed, engineered, developed, manufactured,
 10 tested, produced, assembled, labeled, supplied, imported, distributed, and sold the Subject Phones
 11 and their component parts and constituents, which were intended by **SAMSUNG**, and each of
 12 them, to be used as a consumer smartphone.

13 61. The Galaxy S5 is unsafe for its intended use by reason of defects in its design,
 14 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
 15 safely serve its purpose, but can instead expose the public and **PLAINTIFF** to serious injury.

16 62. The Galaxy S6 is unsafe for its intended use by reason of defects in its design,
 17 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
 18 safely serve its purpose, but can instead expose the public and **PLAINTIFF** to serious injury.

19 63. The Galaxy S6 Edge is unsafe for its intended use by reason of defects in its design,
 20 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
 21 safely serve its purpose, but can instead expose the public and **PLAINTIFF** to serious injury.

22 64. The Galaxy S6 Edge+ is unsafe for its intended use by reason of defects in its
 23 design, engineering, development, manufacturing, testing, production, and/or assembly, such that it
 24 cannot safely serve its purpose, but can instead expose the public and **PLAINTIFF** to serious
 25 injury.

26 65. The Galaxy S6 Active is unsafe for its intended use by reason of defects in its
 27 design, engineering, development, manufacturing, testing, production, and/or assembly, such that it
 28

cannot safely serve its purpose, but can instead expose the public and **PLAINTIFF** to serious injury.

66. The Galaxy Note5 is unsafe for its intended use by reason of defects in its design, engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot safely serve its purpose, but can instead expose the public and **PLAINTIFF** to serious injury.

67. The Galaxy S7 is unsafe for its intended use by reason of defects in its design, engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot safely serve its purpose, but can instead expose the public and **PLAINTIFF** to serious injury.

68. The Galaxy S7 Edge is unsafe for its intended use by reason of defects in its design, engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot safely serve its purpose, but can instead expose the public and **PLAINTIFF** to serious injury.

69. The Galaxy S7 Active is unsafe for its intended use by reason of defects in its design, engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot safely serve its purpose, but instead exposes the public and **PLAINTIFF** to serious injury.

E. PLAINTIFF'S EXPERIENCE

70. Plaintiff **SOTO** purchased a Samsung S5 in February 2015 from Best Buy in Colorado.

71. At approximately 2:30 a.m. on January 11, 2017, Plaintiff **SOTO** was sound asleep with his wife Krystal when a loud explosion, resembling a gunshot, startled them awake. On their dresser, **SOTO's** GalaxyS5 smartphone was on fire, shooting out flames several inches high, and quickly filling the room with smoke. Panicked and fearing for their safety and their home, Krystal Soto picked up the phone and threw it into the sink and attempted to extinguish the exploding phone with water. What remained was a contorted pile of metal, plastic and glass.

V. CLASS ACTION ALLEGATIONS

72. The following Class and Subclass may properly be maintained as a Class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

Class: All persons who purchased, in the State of Colorado, at least one (1) of the Subject Phones at any time during the three (3) year period preceding the filing of this Class Action Complaint (or such longer period if tolling is permitted under the

1 law) and continuing through the date of trial. The Subject Phones are the S5, S6, S6
2 Edge, S6 Edge+, S6 Active, S7, S7 Edge, S7 Active, and Note5 (see ¶ 27).

3 Subclass: All persons who purchased a Samsung Galaxy S5 in the State of Colorado
4 at any time during the three (3) year period preceding the filing of this Class Action
5 Complaint (or such longer period if tolling is permitted under the law) and
6 continuing through the date of trial. (see ¶ 27).

7 73. Excluded from the Class are **SAMSUNG**, their employees, co-conspirators,
8 officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries
9 or affiliated companies; Class Counsel and their employees; and the judicial officers and their
10 immediate family members and associated court staff assigned to this case. Also excluded are any
11 individuals claiming damages from personal injuries arising from an overheating, fire, explosion or
12 other incident. Further excluded is any individual who after purchase of a Subject Phone returned
13 the Subject Phone and received a full refund of his or her purchase price.

14 74. In the addition, the following Class may properly be maintained as a class action
15 pursuant to FRCP 23(b)(2) on behalf of the following individuals:

16 Injunction Class: All persons in the State of Colorado who, following trial, remain
17 in possession of a Subject Phone. The Subject Phones are the S5, S6, S6 Edge, S6
18 Edge+, S6 Active, S7, S7 Edge, S7 Active, and Note5 (see ¶ 27).

19 75. Excluded from the Injunction Class are **SAMSUNG**, its employees, co-
20 conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned
21 subsidiaries or affiliated companies; Class Counsel and their employees; and the judicial officers
22 and their immediate family members and associated court staff assigned to this case. Also
23 excluded are any individuals claiming damages from personal injuries arising from an overheating,
24 fire, explosion or other incident.

25 76. Throughout discovery in this litigation, **PLAINTIFF** may find it appropriate and/or
26 necessary to amend the definition of the Class, the Subclass, and/or the Injunction Class.
27 **PLAINTIFF** will formally define and designate a Class definitions when they seek to certify the
28 Classes alleged herein.

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1 77. Pursuant to Rule 23(a)(1), the Class is so numerous that joinder of all members is
 2 impracticable. While the exact number of Class members is unknown to **PLAINTIFF** at this time,
 3 **PLAINTIFF** believe there are hundreds of thousands of members of the Class.

4 78. Pursuant to Rule 23(a)(3), **PLAINTIFF**'s claims are typical of the claims of the
 5 other members of the Class. **PLAINTIFF** and other Class members received the same
 6 nondisclosures about the safety and quality of Subject Phones. **PLAINTIFF** and Class members
 7 purchased **SAMSUNG** Galaxy S and Note products that they would not have purchased at all, or
 8 for as much as they paid, had they known the truth regarding the overheating problems and fire
 9 hazards. **PLAINTIFF** and the members of the Class have sustained injury in that they overpaid
 10 for the **SAMSUNG** smartphones due to **SAMSUNG**'s wrongful conduct.

11 79. Pursuant to Rule 23(a)(4) and (g)(1), **PLAINTIFF** will fairly and adequately
 12 protect the interests of the members of the Class and Injunction Class and have retained counsel
 13 competent and experienced in class action and consumer fraud and protection litigation.

14 80. Pursuant to Rules 23(b)(2), **SAMSUNG** has acted or refused to act on grounds
 15 generally applicable to the Injunction Class, thereby making appropriate final injunctive relief or
 16 corresponding declaratory relief with respect to the Injunction Class as a whole. In particular,
 17 **SAMSUNG** has failed to properly repair, exchange, recall or replace the Subject Phones.
 18 **SAMSUNG** also continues to sell the Subject Phones and has failed to properly warn consumers
 19 of the risks of overheating, fire and explosion with the Subject Phones.

20 81. Pursuant to Rule 23(a)(2) and (b)(3), common questions of law and fact exist as to
 21 all members of the Class and predominate over any questions solely affecting individual members
 22 thereof. Among the common questions of law and fact are as follows:

- 23 a. whether **SAMSUNG** had knowledge of the defects affecting the Subject
- 24 Phones;
- 25 b. whether **SAMSUNG** concealed defects affecting Subject Phones;
- 26 c. whether **SAMSUNG**'s business practices, including the manufacture and
- 27 sale of phones with a risk of overheating, explosion and fire that
- 28 **SAMSUNG** failed to adequately investigate, disclose and remedy, offend

established public policy and cause harm to consumers that greatly outweighs any benefits associated with those practices;

d. whether **SAMSUNG**'s omissions regarding the risks of the Subject Phones were likely to deceive a reasonable person in violation of the Consumer Fraud Act;

e. whether **SAMSUNG** was unjustly enriched at the expense of **PLAINTIFF** and the Class;

f. whether **PLAINTIFF** and the Class are entitled to damages, restitution, restitutionary disgorgement, equitable relief, and/or other relief; and

g. the amount and nature of such relief to be awarded to **PLAINTIFF** and the Class.

82. Pursuant to Rules 23(b)(3), a Class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and **SAMSUNG**, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A Class action would achieve substantial economies of time, effort and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness.

83. As a direct and legal result of the wrongful conduct and/or omissions of **SAMSUNG**, and each of them, **PLAINTIFF** has been harmed.

VI. APPLICABLE STATUTES

84. The Colorado Consumer Protection Act, at C.R.S. § 6-1-105(1), provides in pertinent part that:

A person³² engages in a deceptive trade practice when, in the course of such person's business... such person: (e) Knowingly makes a false representation as to the characteristics...uses...;(g) Represents that goods...are of a particular standard, quality or grade...if he knows or should know that they are of another; (u) Fails to disclose material information concerning goods...which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into the transaction;

³² As defined in C.R.S. § 6-1-102(6) a "person" includes a corporation.

1
2 85. **SAMSUNG** at all times relative hereto engaged in the sale or advertisement of
3 goods by designing, engineering, developing, manufacturing, testing, producing, inspecting,
4 assembling, labeling, supplying, importing and distributing the Subject Phones and their
5 component parts and constituents, which was intended by **SAMSUNG**, and each of them, to be
6 used as a consumer smartphone.

7 **VII. CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **Violations of the Colorado Consumer Protection Act**

10 **C.R.S. §6-1-105**

11 **(Plaintiff, The Class And The Sub-Class Against All Defendants)**

12 86. **PLAINTIFF** and the Class hereby re-allege and incorporate by reference each and
13 every allegation set forth above, as if fully set forth in detail herein.

14 87. **PLAINTIFF** has standing to bring this action under the Colorado Consumer
15 Protection Act because he suffered injury in fact as result of **SAMSUNG**'s conduct and lost money
16 through his purchase, or payment for one or more of the Subject Phones, which **PLAINTIFF**
17 would not have purchased, or made payment toward if **SAMSUNG** had not concealed the risks of
18 overheating, fire and explosion described herein.

19 88. **SAMSUNG**, through its advertising and marketing of the Subject Phones,
20 concealed, and failed to disclose, material information regarding the fact that the Subject Phones
21 were defectively designed and prone to overheating, catching fire, and explosion despite knowing
22 that such specific and material information to **PLAINTIFF** and the Class.

23 89. **SAMSUNG** sought to fraudulently represent the Subject Phones as safe. But these
24 depictions failed to paint a true portrayal of the Subject Phones as **SAMSUNG** concealed, and
25 failed to disclose, material information regarding the fact that the Subject Phones were defectively
26 designed and prone to overheating, catching fire, and explosion, despite sole and exclusive
27 knowledge.

28 90. At no time did **SAMSUNG** disclose to **PLAINTIFF** and the Class that the Subject
Phones were defectively designed and prone to overheating, catching fire, and explosion. Indeed,

1 despite direct knowledge to the contrary, **SAMSUNG** continually failed to disclose to consumers
 2 that the Subject Phones were defectively designed and prone to overheating, catching fire, and
 3 explosion.

4 91. **PLAINTIFF** and the Class interpreted **SAMSUNG**'s failure to disclose and
 5 omissions as a representation that the Subject Phones did not pose the threat of danger by and
 6 through, among others, overheating, fire, and/or explosion.

7 92. As a direct result of **SAMSUNG**'s failure to disclose that the Subject Phones were
 8 defectively designed and prone to overheating, catching fire, and explosion, **PLAINTIFF**
 9 purchased or otherwise paid money for the Subject Phones which they otherwise would not have
 10 done had **SAMSUNG** disclosed the fact that the Subject Phones were defectively designed and
 11 prone to overheating, catching fire, and explosion.

12 93. At all times mentioned herein, **SAMSUNG** was, and remained, in a superior
 13 position to know the truth about the Subject Phones and their propensity to overheat, catch fire,
 14 and explode.

15 94. The facts concealed by **SAMSUNG** are material facts because any reasonable
 16 consumer would have considered the fact that the Subject Phones' propensity to overheat, catch
 17 fire, and explode to be important in deciding whether to purchase the Subject Phones as opposed to
 18 another smartphone.

19 95. **PLAINTIFF** and the Class reasonably and justifiably relied on **SAMSUNG**'s
 20 failure to disclose that the Subject Phones were prone to overheating, catching fire, and explosion
 21 when purchasing the Subject Phones. **PLAINTIFF** and the Class would not have purchased the
 22 Subject Phones were it not for the material omissions by **SAMSUNG**.

23 96. The intentional omissions by **SAMSUNG** were a substantial factor in causing harm
 24 to **PLAINTIFF** and the Class, and said harm would not have occurred absent the intentional
 25 omissions made by the **SAMSUNG**.

26 97. **SAMSUNG** has deliberately caused and has intended to cause great harm to
 27 **PLAINTIFF** and the Class with full knowledge of the wrongfulness of their conduct.
 28 **PLAINTIFF** further alleges **SAMSUNG**'s conduct as alleged above was despicable, was carried

on with a willful and conscious disregard of **PLAINTIFF** and the Class' rights and well-being, and subjected **PLAINTIFF** and the Class to undue hardship. Therefore, **PLAINTIFF** and the Class should be awarded punitive and exemplary damages sufficient to punish **SAMSUNG** for engaging in this conduct and to deter similar conduct on its part in the future.

WHEREFORE, **PLAINTIFF** and the Class pray for relief as set forth below.

SECOND CAUSE OF ACTION

Unjust Enrichment

(Plaintiff, The Class And The Sub-Class Against Samsung)

98. **PLAINTIFF** hereby re-alleges and incorporates by reference each and every allegation set forth above, as if fully set forth in detail herein.

99. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the Subject Phones, **SAMSUNG** charged a higher price for the Subject Phones than the Subject Phones' true value and **SAMSUNG** obtained monies which rightfully belong to **PLAINTIFF** and the Class.

100. **SAMSUNG** enjoyed the benefit of increased financial gains, to the detriment of **PLAINTIFF** and the Class, who paid a higher price for Subject Phones which actually had lower values. It would be inequitable and unjust for **SAMSUNG** to retain these wrongfully obtained profits.

101. **PLAINTIFF**, therefore, seeks an order establishing **SAMSUNG** as constructive trustee of the profits unjustly obtained, plus interest.

VIII. PRAYER FOR RELIEF

WHEREFORE, **PLAINTIFF** prays that this Court enter judgment in his favor on every claim for relief set forth above and award him relief including, but not limited to, the following:

1. An Order appointing **PLAINTIFF** to represent the Class pursuant to FRCP 23(a) and designating **PLAINTIFF**'s counsel as Class Counsel;
2. An order enjoining **SAMSUNG** from any future violations of the Colorado Consumer Protection Act;
3. An order enjoining **SAMSUNG** from selling the Subject Phones;

- 1 4. Damages and penalties in accordance with the Colorado Consumer Protection Act;
2 5. For economic losses, in an amount according to proof at trial;
3 6. For restitution for **PLAINTIFF** and the Class in an amount according to proof at
4 trial;
5 7. An award for **PLAINTIFF** for the costs of suit and reasonable attorneys' fees as
6 provided by law;
7 8. For interest upon any judgment entered as provided by law; and,
8 9. For such other and further relief as the Court may deem just and proper.

9
10 Dated: March 23, 2017

COTCHETT, PITRE & MCCARTHY, LLP

11 By: /s/ Anne Marie Murphy

12 Niall P. McCarthy
13 Anne Marie Murphy
14 Eric J. Buescher

STONEBARGER LAW, APC

15 By: /s/ Gene J. Stonebarger

16 Gene J. Stonebarger
17 Richard D. Lambert
18 Crystal L. Matter

19 **IX. JURY DEMAND**

20 Plaintiff demands trial by jury on all issues so triable.

21 Dated: March 23, 2017

COTCHETT, PITRE & MCCARTHY, LLP

22 By: /s/ Anne Marie Murphy

23 Niall P. McCarthy
24 Anne Marie Murphy
25 Eric J. Buescher

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